

General Information Letter: Tax return preparers may not submit a photocopy signature on returns.

October 25, 2000

Dear:

This is in response to your letter dated August 30, 2000. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c), which can be obtained at the following website:

<http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated the following:

We are a public accounting firm preparing both Federal and Illinois tax returns. We have been looking for ways to make our process more efficient. One area of concern for us is the policy regarding tax return preparer signature requirements.

According to IRC Reg. §1.6695-1(b)(1), (copy enclosed) the IRS considers it acceptable to satisfy the manual signature requirement with a photocopy of the preparer's signature on the tax return. This procedure allows us to retain the original signature in our records. Further support for this process is contained in Revenue Ruling 78-370 (copy enclosed).

According to Illinois law [5 ILCS 165/4], reproductions may be made after insertion of required information, however all signatures shall be original signatures. Does this include the paid preparer's signature? In order to facilitate a more efficient process at our firm, we would like to follow the Federal signature requirements on Illinois tax returns we prepare, presenting a photocopy of our signature to our client, who would then manually sign the returns they file.

Response

Since your inquiry touches on the meaning of the signature requirement, some explanation of its background will be helpful.

In hearings on the proposed Illinois Income Tax Act (IITA) held before the Senate Public Finance Committee in 1969, Willard Ice testified with an article by article analysis of the proposed legislation. His description of Article V is the only legislative record dealing with the signature paragraph:

And Article V had to do with the filing of returns. There is nothing particularly unusual there. The time periods pretty much follow the Federal . . .

It may be significant that he mentioned the Federal treatment in this context. Although he specifically pointed to a different subject matter, it can be argued that he was inviting reference to the Federal approach in interpreting Article V in its entirety.

The sentence regarding tax preparer signatures was not in the original legislation, but was added to that article in 1982. Public Act 82-1009 added the provision. The bill was an omnibus measure sponsored by Representative Bower that contained various provisions designed to combat tax fraud. Most of the legislative discussion surrounded the duties of revenue enforcement officers and no guidance on the current question was provided.

You make reference to 5 ILCS 165/4, which took effect in 1961. That provision is less than helpful. Even if you assume that 5 ILCS 165/4 does govern the IITA by its application to the "General Revenue Law" of the State, the issue remains unresolved. The act in which it is contained, the Filing of Copies Act, appears to be aimed primarily at the then emerging photocopying technology, giving official status to photocopied state forms. The cited paragraph is concerned that all data be entered in full before the form is signed or attested to, even if the form and the data are photocopied. As such it refers to "original" rather than "manual" signatures, which begs the question as to what constitutes an "original" signature for the tax law.

Black's Law Dictionary gives a very broad meaning to the visible mark that is a "signature". According to its definitions, a signature is any name, word, mark, sign, symbol or device, whether "written by hand, printed, stamped, typewritten, engraved, photographed, or cut from one instrument and attached to another". According to Black's, it is the purpose of the mark that has particular significance. A signature is placed in order to "attest the validity of an instrument" or "authenticate a writing". An "original" signature, therefore, could be almost any symbol, so long as it has the purpose in the maker's mind of attesting to a document.

Given the broad reach of the tax law, some uniformity must be imposed. State law leaves that uniformity somewhat unclear, but the Federal approach does provide guidance that may be helpful. It is a significant limitation of Black's common law understanding. What is the Federal approach and can it be adopted for the IITA?

IRC §6695(b) imposes a penalty of \$50.00 for any return for which a preparer willfully neglects to comply with "regulations prescribed by the Secretary to sign such return. . ."

Treasury Regulations (26 CFR 1.6695-1(b)(1)) state, in part:

b) Failure to sign return. (1) . . . an individual who is an income tax return preparer . . . shall manually sign the return or claim for refund (which may be a photocopy) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. Except as provided in paragraphs (b)(4)(iii) and (iv) of this section, an individual preparer may not satisfy this requirement by use of a facsimile signature stamp or signed gummed label. . . .

The exception mention in that paragraph is the following:

(4)(i) The manual signature requirement of paragraphs (b)(1) and (2) of this section may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation.

As Rev. Rul. 78-370 explains, these provisions allow the filing of a photocopy of a form which contains the return preparation and the manual signature of the preparer, so long as that photocopy

contains the manual signature of the taxpayer. This practice "will satisfy the manual signature requirement. The original form retained by the preparer would be a copy of the taxpayer's return." (Rev. Rul. 78-370, 1978-2 CB 335).

The cited Federal regulations maintain the requirement that a preparer manually sign a return. In fact, it must be the unaltered version of the fully completed return. There is no relaxation of the prohibition on stamped or facsimile signatures. However, the procedure does permit the filed version with the taxpayer's manual signature to be a photocopy of the prepared and signed version. Again, this is not considered a deviation from the signing requirement, but a way to "satisfy" it.

Since Illinois statutes and regulations are silent on the preparer signature issue, Federal treatment is the best guidance available. Is there any authority for adopting the Federal treatment in light of the absence of state specificity?

According to IITA §102, terms in the Act are to "have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 . . ." As already noted, the Federal Code itself provides full authority to the Secretary of the Treasury to prescribe specific signature mechanisms. It can certainly be argued that interpretive Treasury regulations alone are not intended by IITA §102 to influence the meaning of state tax law. However, a provision of the code that invites delineation by regulation gives rise to a different level of authority. The Secretary of the Treasury in that circumstance is fulfilling the meaning of terms in the IRC, not simply interpreting them.

In this circumstance, therefore, IITA 102 may be taken as the authority to adopt Federal treatment of the preparer signature requirement as contained in Treasury Regulations. Giving some additional weight to this conclusion is the implied invitation of Willard Ice, an author of the IITA, to look to Federal treatment of Article V requirements, as noted above.

For these reasons, it would not be an error to conclude that IITA §503(a) preparer signature requirements may be satisfied in the same way that Federal signature requirements are satisfied.

Please do not hesitate to call me at (217) 782-2844 if you have further questions. As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department as a definitive statement of law. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

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